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Inheritance Law of the People's Republic of China

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The Law of Succession of the People's Republic of China (the 'Inheritance Law' or the 'Law') was promulgated on 1 October 1985 and has its basis in China's Civil Code, where the right to inherit property is recognised. One of the key functions of the Inheritance Law was to equalise the right of men and women to inherit property under Chinese law.¹ Previous to the enactment of the Inheritance Law, tradition and custom prevailed regarding the inheritance of property. Often, women did not enjoy the same right of inheritance as men. For example, although a nephew could inherit property from an uncle on his father's side, a niece could not. Tradition also excluded a married daughter from being included in any division of a parent's estate.

Inheritance by operation of law

The Inheritance Law provides the order of succession as follows:

'First order of succession: spouses, children and parents. Second order of succession: brothers and sisters, paternal and maternal grandparents. When the succession begins, the successor(s) first in order shall inherit to the exclusion of successor(s) second in order. The successor(s) second in order shall inherit in default of any successor(s) first in order.'²

The Inheritance Law also provides that if the children of the deceased die before the parent, the lineal relatives by blood of the younger generation of the deceased shall inherit by representation. The representative heir generally can only inherit the quota of succession which the father or mother of the representative heir is entitled to.³

Although China's Inheritance Law is similar to many other countries in that the order of succession is based on blood and marital relationships, China has also inserted an interesting principle in the Inheritance Law which provides

that a widowed daughter-in-law or son-in-law, who has exercised the main obligation to support his or her father-in-law or mother-in-law, shall be regarded as a successor first in order.⁴ This provision is based on what the Chinese call the principle of 'socialist morality'. It brings into play, mixed with the degree of kinship, the concept of consideration. The Inheritance Law also provides that a successor who had the ability to support the decedent but failed to do so could be given a smaller share or deprived of his or her share of the estate.⁵

This principle even extends to a person with no blood or marital ties whatsoever with the deceased, eg a neighbour.⁶ For example, there is a case in China which holds that a deceased's neighbour who has helped her for ten years was entitled to part of the estate to the exclusion of some of the deceased's children.⁷ Again, the case stresses the court's attempt to balance 'socialist morality' with the rights of relations by blood and by marriage.

China's Inheritance Law also has another unique feature. In the distribution of the estate, an heir's ability to work is given consideration, and an heir who lacks work capability is given preferential treatment in the distribution of the estate.⁸

These two principles give the courts in China wide latitude to decide both the order of succession as well as the amount of distribution of the estate to the various heirs. For example, it can lead to a situation where a daughter-in-law who has provided support to the father-in-law, and later is unable to support herself, finds herself the sole beneficiary of the estate where there may be other children who have work capabilities but did not provide support to the deceased.

Inheritance by will

In China, inheritance by will has long been in practice. Even during the feudal days, the dying person often called

together his or her family and orally dictated what the distribution of his or her assets would be upon his or her death. After the founding of the Republic of China in 1911, the Civil Code of the Republic specifically provided for inheritance by will.⁹

The Inheritance Law provides that 'a citizen may, by means of a will made in accordance with the provisions of this Law, dispose of the property he owns' and may appoint a testamentary executor for the purpose.¹⁰ The Law also provides that 'a citizen may donate his individual property by will to the state, collective organisation or non-legal heir.'¹¹ China recognises five forms of wills: notarised will; holographic will; will which is made on behalf of the deceased; nuncupative will; and tape-recorded will.

If there are several wills made by the same decedent, the last will will be given validity. However, a notarised will cannot be altered or voided by a holographic, oral, tape-recorded will, or a will made on behalf of the deceased.¹²

Freedom to will property

China's Inheritance Law provides that its citizens have the right to dispose of their private property. However, this is not an unfettered right. There are a number of restrictions on the provisions in a will. For example, a will which is contrary to the socialist morality standards can be ruled invalid.¹³ An example of such a will is when a father's will provided that his daughter can only inherit the estate conditional upon her producing a son after her marriage. This will was held invalid because it discriminated against women.¹⁴ However, nowhere does the Inheritance Law provide that a will must comply with 'socialist morality'. This rule seems to have been created by the courts to arrive at some 'just results'. In China, a will may be invalidated if it deprives certain categories of people of their inheritance. For example: a will which

deprives inheritance to an heir who lacks the ability to perform work and has no income,¹⁵ a will which deprives the necessary inheritance of a fetus,¹⁶ a will made by a person who has no capacity or has only limited capacity,¹⁷ a will which is made by a person under the age of 18 or is determined to be mentally ill, or a will which is made under duress or fraud.¹⁸

Chinese courts and their rules

Because the principles of 'socialist morality' and 'equality' can be factors in decisions made by the Chinese courts, cases have gone far beyond the stated principles in the Inheritance Law and created a number of rules which can often alter what a decedent's will actually states. In one case, the plaintiff's mother died and left money which was earned during the marriage to her father. The plaintiff's father became involved with a young woman, and the father's subsequent will left all of the property, including the mother's property, to the girlfriend. The plaintiff sued her father and challenged the validity of the will prior to his death. The court held that the will was against 'socialist morality' as it promoted cohabitation without marriage. Since the will was the instrument promoting the relationship, the will was held to be invalid. This case is interesting by Anglo-American standards in that not only was the will challenged prior to the testator's death, but the actual principle of the case seems to turn on the fact that the will was an immoral contract between the father and the girlfriend, promoting an undesirable relationship and not that the will violated any prohibition in the Inheritance Law.

Wills and contracts

China's Inheritance Law also recognises agreements made between a testator and a person who provides support during the testator's lifetime. There are cases which hold that if the deceased has promised to leave his or her estate to the person providing the support, such an agreement will be recognised and given validity even if the agreement is not actually reflected in a will.¹⁹ The Chinese courts have consistently given standing to people who have provided support to challenge wills which have left them out or recognised wills which have excluded blood relationships in favour of a person who has provided support. Again, there seems to be a blending of contract issues with succession issues.

Inheritance involving foreign beneficiaries

There are very few cases in China which involve inheritance by foreign beneficiaries. The Inheritance Law provides that in a case where a Chinese citizen inherits property outside of the People's Republic of China or inherits a foreigner's property in the People's Republic of China, the domiciliary law of the deceased shall be applied if it is movable property, and the law of the place where the immovable property is located shall be applied if it is immovable property. In a case where a foreigner inherits property in the People's Republic of China or inherits the property of a Chinese citizen outside of the People's Republic of China, the domiciliary law of the deceased shall be applied if it is a movable property, and the law of the place where the immovable property is applied if it is immovable property. If the People's Republic of China has

concluded a treaty or agreement with the foreign country, the treaty or agreement shall be applied.²⁰ Unfortunately, there is no definition of what is 'domiciliary law' under Chinese law. 'Domicile' is also not defined under Chinese law. The Chinese Civil Procedure Law seems to recognise the concept as being akin to the US concept of 'residence'. For Chinese citizens, because residence registration is required and a person is only entitled to one such registration, the 'residence' or 'domicile' is easy to determine. However, where there is a foreign party involved, the issue may be complicated if the foreign person has two 'residences' or two 'domiciles'.

There are also no Chinese cases reported where the jurisdictional issue has been raised when an estate involves both movable and immovable property and a foreign beneficiary. □

Footnotes

- 1 Law of Succession of the People's Republic of China (hereinafter 'Inheritance Law'), 1 October 1985, Article 9. A copy of the Inheritance Law is available in English from the Editor at the IBA London office.
- 2 Ibid, Article 10.
- 3 Ibid, Article 11.
- 4 Ibid, Article 12.
- 5 Ibid, Article 13.
- 6 Ibid, Article 14.
- 7 *Estate of Hsu*, reported in *Zenyang Jicheng Yichan* ('How to Inherit'), edited by Wang and Shan, 1985, p 145.
- 8 Inheritance Law, Article 14.
- 9 Liu Chun Mao, *Ji Cheng Fa Tong Lun* ('A General Introduction to Inheritance Law'), p 142, 1986.
- 10 Inheritance Law, Article 16.
- 11 Ibid, Article 16.
- 12 Ibid, Article 20.
- 13 Note, at p 150.
- 14 Note 9, at p 196.
- 15 Inheritance Law, Article 19.
- 16 Ibid, Article 28.
- 17 Ibid, Article 22.
- 18 Ibid.
- 19 Note 9, at p 247.
- 20 Ibid, Article 36.

Inheritance Law of the USSR

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Soviet inheritance law today is on the verge of a new period in its development as its importance becomes more fundamental to the functioning of society. This is due to a rapid and wider involvement of the role of property belonging to citizens in the process of material production.

It is worth noting at this point that according to the Constitution of the USSR, property belonging to citizens is called personal property while the property of the State, cooperatives, collective farms and public organisations is called socialist property. The State enjoys exclusive ownership of land,

mineral and water resources and forests. The State owns the major means of production in industry, construction and agriculture; means of transport and communication; banks; and the property of state sponsored, communal and other enterprises as well as other objects. Collective farms and other